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32 Case No. 3:23-cv-03461-TLT-RMI

33 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' ADMINISTRATIVE MOTION**

UNITED STATES DISTRICT COURT
DISTRICT OF NORTHERN CALIFORNIA
SAN FRANCISCO DIVISION

COURTNEY MCMILLIAN and RONALD COOPER, on behalf of themselves and all others similarly situated,

Plaintiffs,

V.

X CORP., f/k/a/ TWITTER, INC.,
X HOLDINGS, ELON MUSK, DOES.

Defendants.

Case No. 3:23-cv-03461-TLT-RMI

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEFING**

Judge: Trina L. Thompson
Magistrate Judge: Robert M. Illman

Defendants' Administrative Motion for Leave to File Supplemental Briefing in Support of their Motion to Dismiss the Amended Complaint and in response to Plaintiffs' Answers to the Court's Notice of Questions should be denied.

On April 3, 2024, the Court ordered the Parties to respond to eight discrete, factual questions regarding Twitter’s ERISA plan, including the effective dates, the plan documents, the fiduciaries, the locations of plan administration, and employer contributions. Dkt. 65. The Court instructed that if a party produced a document in response to the Court’s questions, that the party attach the document as an exhibit to a Declaration, and specifically requested that the Parties

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1 “attach to a Declaration of Stipulation all documents that make up the alleged ERISA plan” and
2 asked whether the Severance Matrix is one of the plan documents. *Id.* at 1, 2.

3 Defendants submitted answers to the factual questions raised by the Court. Dkt. 73.
4 Plaintiffs also submitted answers to the Court’s factual questions, explaining in part that Twitter
5 had memorialized its severance policy in the Severance Matrix and had provided a summary of
6 the Severance Matrix to employees via FAQs that the company updated throughout 2022. Dkt. 75
7 at 3. Per the Court’s request, Plaintiffs submitted the FAQ documents and attached them to a
8 Declaration. Dkt. 75-1, Ex. A.

9 Contrary to Defendants’ assertion, the information in Plaintiffs’ Answers is not new: it is
10 in Plaintiffs’ Amended Complaint. *See* Am. Compl., ¶¶ 27-28, 37, 44-51 (plan documents); 7 (San
11 Francisco headquarters); 11, 57, 91, 108 (DOE Defendants); 30-34, 36, 43, 112-14 (payments to
12 and from Plan). Plaintiffs specifically named, described, and excerpted the Acquisition FAQs in
13 their Amended Complaint and Response to Defendants’ Motion to Dismiss.¹ Dkt. 13, Dkt. 45.
14 Defendants have twice responded to Plaintiffs’ arguments regarding the Acquisition FAQs: in their
15 Reply to Plaintiffs’ Response to Defendants’ Motion to Dismiss and in their answers to the Court’s
16 questions. Dkt. 73, Dkt. 50. Because the information Plaintiffs provided in response to the Court’s
17 questions has already been provided to, and twice addressed by Defendants, supplemental briefing
18 is not warranted. *See Afifeh v. Ahmadabadi*, 2022 WL 3016147, at *1 (C.D. Cal. July 5, 2022)
19 (providing more detail to an argument that has been already raised is not a “new” argument).

20 In addition, Defendants failed to meet and confer with Plaintiffs regarding their request to
21 file a response to Plaintiffs’ answers to the Court’s questions.² Should the Court grant Defendants’
22
23

24
25 ¹ Furthermore, Defendants have possessed the Acquisition FAQs document throughout this
26 litigation. Given Plaintiffs’ extensive citation to this document in their Amended Complaint,
27 further discussion of its contents before the Court was to be expected and is not prejudicial.

² Defendants’ failure to request a stipulation violates Civil Local Rule 7-11(a) and provides an
independent basis for this Court to strike Defendants’ Administrative Motion. *See Meta Platforms,
Inc. v. Voyager Labs LTD.*, 2023 WL 4828007, at *3 n. 2 (stating that filings which fail to comply
with the Northern District of California’s local rules may be struck).

1 request, Plaintiffs respectfully request the opportunity to respond to Defendants' Answers and
2 Defendants' additional briefing.³

3
4 DATED: April 23, 2024

Respectfully submitted,

5 Sanford Heisler Sharp, LLP

6 By: /s/ Kate Mueting
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27 ³ Plaintiffs also respectfully submit that the numerous requests for supplemental filings with
respect to factual issues highlights the genuine disputes underlying Plaintiffs' claim and the
inappropriateness of Defendants' Motion to Dismiss.

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PLAINTIFFS' OPPOSITION TO DEFENDANTS' ADMINISTRATIVE MOTION

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a copy of this filing to all counsel of record.

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X Holdings, and Elon Musk*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: April 23, 2024

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